

Decision for dispute CAC-UDRP-105309

Case number CAC-UDRP-105309

Time of filing 2023-03-30 11:05:26

Domain names starstable.games

Case administrator

Organization Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization STAR STABLE ENTERTAINMENT AB

Complainant representative

Organization SILKA AB

Respondent

Name , Fu Lian You

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant owns a global portfolio of STAR STABLE-formative registered trademarks. The Complainant establishes its online presence under, inter alia, the domain name <starstable.com> (registered on October 16, 2007), which hosts a website that displays information about the Complainant and its MMORPG.

FACTUAL BACKGROUND

The Complainant in this proceeding is STAR STABLE ENTERTAINMENT AB, a Swedish company founded in 2010 and located in Stockholm. The Complainant operates in the gaming and entertainment industry; and it has become a multi-channel entertainment company, home of an independent record label, short form animations, book series, comics and mobile apps.

The Complainant has become internationally famous thanks to "Star Stable", the #1 fastest-growing horse adventure game in the world. Star Stable is a massively multiplayer online role-playing game (MMORPG) built especially for those with a passion for horses. In the game, players ride their own horse through the huge 3D world, customize their character and horse, compete in different races and competitions, chat and help each other through challenges, mysteries, and horse adventures the game has to offer. With over 21 million registered users across 180 countries (including China), and support in 14 languages, the Complainant provides an expanding gaming and entertainment platform that fosters social connections, adventures and creativity for an underserved community of gamers.

Today, the Complainant has an eclectic team of over 170 employees in 25 different countries around the globe. Likewise, the Complainant announced last year that its revenue in 2020 reached USD44 million (approximately GBP35,68 million).

The disputed domain name <starstable.games> was registered on 13 October 2022. The disputed domain name does not resolve to any active website as of the date that this Complaint is filed.

PARTIES CONTENTIONS

The Complainant's contentions are summarised below.

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Complainant requests that the language of this administrative proceeding be English. Pursuant to UDRP Rule 11(a): Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding. Complainant makes this request in light of the potential Chinese language Registration Agreement of the disputed domain name involved at this Complaint.

Paragraph 10 of the UDRP Rules vests a Panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case. UDRP panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios were summarized into WIPO Jurisprudential Overview 3.0, 4.5.1. In this particular instance, the Complainant tried to request change of languages of proceedings in light of Chinese language Registration Agreement by showing that 1) The Dispute Domain Name contains generic English words such as "star" and "stable", suggesting that the Respondent has some grasp of the English language; and 2) the translation of the Complaint would unfairly disadvantage and burden the Complainant and delay the proceedings and adjudication of this matter.

In light of the scenarios and equity, the Panel is of the view that conducting the proceeding in English is unlikely to heavily burden the Respondent, and it is likely that the Respondent can understand the English language based on a preponderance of evidence test. Without further objection from the Respondent on the issue, the Panel will proceed to issue the decision in English.

PRINCIPAL REASONS FOR THE DECISION

1. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights

The Complainant in this proceeding is STAR STABLE ENTERTAINMENT AB, a Swedish company founded in 2010 and located in Stockholm. The Complainant contends that the disputed domain name <starstable.games> is confusingly similar to the Complainant's trademark "STAR STABLE". The Complainant operates in the gaming and entertainment industry. The Complainant

has become internationally famous thanks to “Star Stable”, the #1 fastest-growing horse adventure game in the world. Star Stable is a massively multiplayer online role-playing game (MMORPG). This popular game has over 21 million registered users across 180 countries. The Complainant owns a global portfolio of STAR STABLE-formative trademarks, including trademark registrations in China, the United States and EU etc. The Complainant establishes its online presence under, inter alia, the domain name <starstable.com> (registered on October 16, 2007), which hosts a website that displays information about the Complainant and its MMORPG.

The disputed domain name <starstable.games> was registered on 13 October 2022. gTLDs are commonly viewed as a standard registration requirement, and as such they are disregarded under the first element confusing similarity test (WIPO Overview 3.0). Nonetheless and in this case, with the addition of the gTLD “.games”, internet users are likely to assume that the disputed domain belongs to the Complainant and refers to branded Complainant’s popular online gaming product. Therefore, the Panel is the view that the specific selection of the “.games” gTLD adds to the confusion of internet consumers.

The Panel therefore concludes that the disputed domain name is confusingly similar to a trademark in which the Complainant have rights within the meaning of paragraph 4(a)(i) of the Policy.

2. The Respondent has no rights or legitimate interests in respect of the disputed domain name

Although the Respondent did not file an administratively compliant (or any) response, the Complainant is still required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant in the present case has not licensed or authorized the Respondent to register or use its trademark or the disputed domain name. There is no evidence that the Respondent is known by the disputed domain name or owns any corresponding registered trademarks. The organization of the Respondent, “Fu Lian You”, also has no connection with the Complainants’ brand. The Complainant did not grant any license or authorization to the Respondent to register or use the disputed domain name, nor the use of the Complainants’ trademark on pages of the disputed websites.

On the basis of preponderance of evidence, and in the absence of any evidence to the contrary or any administratively compliant response being put forward by the Respondent, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

3. The disputed domain name has been registered and is being used in bad faith

The use and registration of the disputed domain name by the Respondent has been done in bad faith.

First of all, the registration of the disputed domain name by the Respondent was done in bad faith. UDRP panels have consistently held that the mere registration of a domain name that is confusingly similar to a famous trademark by an unaffiliated entity can by itself create a presumption of bad faith. With the reputation of the STAR STABLE trademark, the presumption arises that the disputed domain name was registered with the intention to attract Internet users by creating a likelihood of confusion with the well-known STAR STABLE trademark. Even assuming that the Respondent was not aware of the presence of the STAR STABLE trademark prior to registration, a simple search in an online trademark register or in Google or Baidu search engines would have informed the Respondent on the existence of the Complainant and its rights in the STAR STABLE mark.

Secondly, the use of the disputed domain name was in bad faith. The Complainant notes that it does not resolve, and it did not resolve to an active website in the past. However, pursuant to section 3.3 of the WIPO Overview 3.0, the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding if certain circumstances are met. “While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.” As the Complainant has rightly pointed out having regard to structure of the disputed domain name in the way confusingly similar to the Complainant’s trademark, and without providing additional evidence to prove any potentially legitimate use, it is impossible to think of any good faith use to which the disputed domain name could be put by the Respondent.

Moreover, a cease-and-desist letter was sent to the Respondent on 3 November 2022 and the Respondent never responded. Prior panels have also held that a failure to respond to a cease-and-desist letter can be evidence of bad faith (see e.g., HSBC Finance Corporation v. Clear Blue Sky Inc. and Domain Manager, WIPO Case No. D2007-0062).

Therefore, in the absence of any evidence to the contrary (or any administratively compliant response) being put forward by the Respondent, the Panel determines that the Complainant provided prima facie evidence undisputed by the Respondent that the disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **starstable.games**: Transferred
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PANELLISTS

Name	Carrie Shang
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DATE OF PANEL DECISION 2023-05-21

Publish the Decision
